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In re Application of JACOBS et al :
U.S. Application No.: 10/542,958 :
PCT Application No.: PCT/US04/01773 : DECISION
Int. Filing Date: 23 January 2004 :
Priority Date Claimed: 24 January 2003 :
Attorney Docket No.: 96700/1031 :
For: USE OF MYCOBACTERIAL VACCINES. . . :

This is in response to the papers filed 06 July 2006, which is being treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 23 January 2004, applicant filed international application PCT/US04/01773, which claimed priority of an earlier United States application filed 24 January 2003. The thirty-month period for paying the basic national fee in the United States expired on 24 July 2005.

On 21 July 2005, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 13 March 2006, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 06 July 2006, applicant filed executed declarations.

DISCUSSION

The correspondence filed 06 July 2006 states that joint inventor Stoyan Bardarov is deceased.

37 CFR 1.42 provides, "In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent."

Effective 07 November 2000, 37 CFR 1.497(b)(2) specifies that, where a person making the declaration is the legal representative of a deceased inventor, the declaration shall state the following: (1) the relationship of the person to the inventor, (2) the facts the inventor would have been required to state, upon information and belief, (3) that the person is the legal representative of the deceased inventor, and (4) the citizenship, residence, and mailing address of the legal representative.

The declaration executed by the legal representative of Stoyan Bardarov is in compliance with 37 CFR 1.497.

The declaration executed by the other joint inventors is improper. Specifically, the declaration does not list Stoyan Bardarov as an inventor as required by 37 CFR 1.497(a)(3). Furthermore, the declaration is an impermissible composite declaration which consists of one each of pages 1 and 2 and three of page 3. Where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration. MPEP 201.03. Applicant must furnish: (1) a single complete declaration which is presented to and executed by all of the living inventors or (2) multiple complete declarations, each of which is presented to and executed by at least one of the inventors.

CONCLUSION

For the reasons above, the request for status under 37 CFR 1.42 is GRANTED.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision, including preparation and mailing of a Notification of Defective Response (Form PCT/DO/EO/916) which should indicate that a new declaration executed by the living inventors is required.



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